



Is ‘Enhanced Cooperation’ a Legitimate Topic for Discussion at the IGF?

(A contribution of IT for Change to IGF consultations, in Geneva, September, 2008, regarding the agenda and program for IGF’s third meeting in Hyderabad in December, 2008)

We understand that in developing the IGF program, the Multistakeholder Advisory Group (MAG) is faced with the difficult task of prioritizing from among many different issues and topics that are related to its mandate. However, it is important that MAG does not *prima facie* exclude from its consideration any topic that is clearly, and constitutionally, related to its mandate.

Either it is not a policy issue, or it can be discussed at the IGF

The point in case is the issue of ‘enhanced cooperation’. WSIS clearly mandated ‘enhanced cooperation’ as a process for global Internet policy making. Paragraph 68 of Tunis Agenda (TA), which prefaces substantive paragraphs 69-71 on ‘enhanced cooperation’, sets the purpose of this process as “need for development of public policy”. Further reading of TA strengthens this description of the rationale and purpose of ‘enhanced cooperation’.

Immediately after identifying the need for ‘enhanced cooperation’, and mandating a process towards it – though , due to reasons that are widely known, leaving its precise nature to be decided subsequently – TA speaks about setting up a “new forum for multi-stakeholder policy dialogue – called the *Internet Governance Forum*”. Its primary mandate is to “discuss public policy issues”.

If ‘enhanced cooperation’ is accepted as an issue of (global) public policy, and IGF as a forum for discussing (primarily, global) public policy, then it is not only legitimate but necessary that ‘enhanced cooperation’ gets discussed at the IGF. It is not, in our view, up to the MAG to decide on issues that are ‘constitutional’ as per the WSIS, from which MAG derives its own authority.

To state the logic in the reverse fashion, to exclude this topic from the IGF, one must be able to either say that ‘enhanced cooperation’ is not a public policy issue or process¹, or assert that IGF is not a policy dialogue forum. To do either however will be to go against what was clearly decided by the world community at the WSIS, as is explicitly stated in the
TA.

¹ Obviously, every public policy process itself constitutes a public policy issue.

‘Discussing policy’ and ‘doing policy’ are two different things

It is important to understand that doing ‘enhanced cooperation’ and discussing ‘enhanced cooperation’ are two entirely different things. As much as making policies on ‘critical Internet resources’, content, or telecommunication, on the one hand, and discussing them, on the other, are two different things. IGF does not have the mandate to make these policies, but it has clearly been mandated to discuss and deliberate on any or all of them. Similarly, a discussion at the IGF on the ‘enhanced cooperation’ process does in no way transgress on the UN Secretary General’s mandated role to initiate a process of setting up the platform or structure of actual ‘enhanced cooperation’, which is expected to have a direct role in making global Internet policy making. The IGF, however, *must* assist it in this task; since, assisting policy making, through processes of dialogue and deliberation, is the very rationale of ‘policy dialogue’ forums. (What would be their purpose otherwise?)

One of the primary objectives of the WSIS was to meet the challenge of policy vacuum in the area of global Internet policies. Its primary outcome in this area, admittedly an unfinished task, has been a very creative separation between a (official) multi-stakeholder policy dialogue forum, and a ‘work in progress’ new space and structure for ‘making’ global public policy. As noted earlier, the text of TA mandates the creation of IGF as a policy dialogue forum immediately after it describes ‘enhanced cooperation’ as a process or space for making global Internet policies, the mandate of initiating a process towards which was given to the Secretary General.

Such a creative institutional separation, the kind of which is associated with mature democratic systems, is however meaningful only to the extent that there are strong and creative linkages between these two spaces or institutions. Without such linkages with key policy bodies and processes, the IGF is meaningless. While the need for such linkages is obvious in the very mandate of the IGF, as discussed above, TA specifically underlines the need for such linkages, in points (b) and (c) of paragraph 72 which sets the mandate of the IGF.

(72 b) Facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the Internet and discuss issues that do not fall within the scope of any existing body.

(72 c) Interface with appropriate intergovernmental organizations and other institutions on matters under their purview.

Trying to distance the IGF from the structures and processes that are responsible for policy making will subvert the primary rationale and mandate of the IGF. There are some strong forces trying to reduce the IGF to a ‘best practices’ forum. ‘Best practices’ are very different from policy deliberations, and this fact should be clearly understood when speaking about the mandate of the IGF. A straight-forward reading of the Tunis Agenda leaves no doubt that policy dialogue or deliberation is the primary mandate of the IGF, and sharing best practices can only be a secondary one.

Strengthening IGF as a primary institution for deliberative democracy in global Internet policy making

IGF represents a unique institution, heralding new possibilities of deliberative democracy at the global level. Its legitimacy is in the openness of its participation to everyone, without rank or hierarchy. Its usefulness depends on strengthening its linkages to policy making bodies, rather than weakening them. Its deliberations should feed into these bodies, for purpose of which IGF needs to develop structural linkages to them, which in turn will lend greater legitimacy to global Internet policy making processes.

Quoting Wikipedia on deliberative democracy;

Deliberative democracy... is a term used ... to refer to any system of political decisions based on some tradeoff of consensus decision making and representative democracy. In contrast to the traditional theory of democracy, which emphasizes voting as the central institution in democracy, deliberative democracy theorists argue that legitimate lawmaking can only arise from the public deliberation of the citizenry.

One of the primary features of a ‘deliberative democracy’ is “an ongoing independent association with expected continuation” (Joshua Cohen, ‘The Good Polity’). The Internet Governance Forum very much looks like such a body or association.

Our actions towards promoting or, alternatively, weakening IGF’s linkages to policy-making bodies will decide whether or not we are contributing to building it as a new experiment in global deliberative democracy, which WSIS intended it to be. It is therefore important to use the IGF for deliberating on all important Internet policy issues, and on all policy making bodies and processes. IGF’s real purpose is to give access, and a forum for influence, to constituencies and groups that normally do not have access to these policies, process and bodies.

IGF’s second meeting in Rio was especially significant for bringing processes of making policies regarding ‘critical Internet resources’ on IGF’s agenda. The logical next step is to bring the crucial, WSIS mandated, global process(es) for addressing higher global public policy issues – captured in the term ‘enhanced cooperation’ – on the agenda of the IGF’s third meeting at Hyderabad. This will represent the right progression in maturity and purposefulness of the IGF.

In discussing policies regarding ‘critical Internet resources’ at Rio, the IGF cannot be said to have taken upon itself the mandate of *making* these policies. In the same way, in discussing ‘enhanced cooperation’, the IGF will neither transgress on what ‘enhanced cooperation’ is supposed to do – *make* global Internet policies, or even on what the UN Secretary General is supposed to do – initiate the process towards formalizing the structure of ‘enhanced cooperation’. Disallowing a discussion on ‘enhanced cooperation’ at the IGF, on the other hand, will be a denial of the democratic rights of the IGF participants to know about what is happening on ‘enhanced cooperation’, and to contribute to the shaping of its structure.